Calendar No. 893

100TH CONGRESS *2d Session*	SENATE	REPORT 100-475

PROTECTING OUR NATION'S GROUND WATER: THE NEED FOR BETTER PROGRAM COORDINATION

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 1992

TO PROMOTE INTERGOVERNMENTAL AND INTERAGENCY COOPERATION ON GROUND WATER MANAGEMENT AND PROTECTION AND TO FACILITATE THE DISSEMINATION OF PRACTICAL INFORMATION ON GROUND WATER PROTECTION TO THE PUBLIC

AUGUST 10, 1988.—Ordered to be printed

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PROTECTING OUR NATION'S GROUND WATER: THE NEED FOR BETTER PROGRAM COORDINATION

AUGUST 10, 1988.—Ordered to be printed

Mr. GLENN, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 1992]

The Committee on Governmental Affairs, reports a bill (S. 1992) to promote intergovernmental and interagency cooperation on ground water management and protection and to facilitate the dissemination of practical information on ground water protection to the public, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends the bill, as amended, do pass.

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I. PURPOSE

The purpose of S. 1992 is to streamline the Federal Government's efforts to protect and manage the Nation's ground water, and make these efforts more effective and responsive to state and local needs. The federal legislative and regulatory framework for ground water pollution control is not fully developed or coordinated; therefore,

coordination among Federal agencies need to be improved. This lack of Federal agency coordination hampers state and local governments in their ground water protection programs. This legislation is intended to enable all levels of government to step back and evaluate what Federal regulatory changes are necessary to create more effective intergovernmental relations in the field of ground water management and protection.

II. Background

Ground water supplies the drinking water for over 50 percent of the total U.S. population—some 12 billion gallons per day. It is virtually the only source of drinking water for rural America, supplying 97 percent of estimated rural needs. Ground water also supplies 40 percent of agricultural irrigation water and 26 percent of industrial needs. Two-thirds of all ground water used is for agricultural purposes.

Although ground water is an irreplaceable natural resource, efforts to prevent its contamination have been fragmented throughout the Federal Government. Currently, more than two dozen Federal agencies and offices—from the Departments of Agriculture, Interior, and Energy, to the Nuclear Regulatory Commission—share responsibility for the management and protection of the Nation's ground water. [See Appendix 1 for some examples.] Moreover, more than 16 major pieces of Federal legislation concern ground water. [See Appendix 2 for some examples.] This fragmentation is the result of many years of *ad hoc* legislation. No individual Federal statute is singularly focused on ground water protection.

Ground water is extraordinarily difficult to clean up once it has been contaminated. Ground water contamination can occur in many ways, but there are two broad categories of contaminants: point and nonpoint. Examples of point sources of contamination are leaks from underground storage tanks; waste storage pits, dumps, and ponds; and industrial spills. Nonpoint sources are often associated with farming, and include soil erosion and pesticide or fertilizer leachate. Urban runoff is also a nonpoint source of contamination.

In the 1970's, when ground water pollution problems first began to attract national attention, the primary concern was to alleviate point source pollution. By the late 1970's, when many of the point sources were being brought under control, public awareness shifted to nonpoint sources. The need for a more focused Federal ground water protection effort has been cited by the Office of Technology Assessment, the Congressional Research Service, and the private sector. S. 1992 was introduced to promote coordination of Federal ground water protection and research efforts and to streamline national programs, thereby making them more responsive to state and local needs.

The Office of Technology assessment reports that:

> Ground water quality related programs among, and within, institutions are often not coordinated, nor are they coordinated with programs for ground water quantity or surface water even though ground water and surface water quality and quantity are interconnected.

> From a ground water protection viewpoint, existing federal and State programs also generally have a narrow focus with respect to sources, contaminants, and users. . . . The programs vary in their approaches to protection of ground water quality and generally do not take into account the potential of the sources to contribute to ground water contamination.

State and local governments are currently charged with primary responsibility for carrying out ground water protection programs. Yet, fragmented Federal policies have increased the difficulties facing States. Research data is gathered and retained in great quantities by Federal agencies, but such data is often not fully accessible. Thus, State and local governments have limited opportunity to benefit from federal research programs.

Overlapping jurisdictions among Federal agencies compel State and local program managers to work with a number of Federal officials, who often represent agencies with conflicting ground water objectives. Accessing information regarding Federal policies and available assistance is, as Mr. Terry Fabian of Pennsylvania's Department of Environmental Resources put it during the April 22 hearing, "a matter of luck."

The current lack of coordination was highlighted during the Subcommittee's hearings. For example, many agencies have overlapping and often contradictory jurisdiction when ground water contamination involves radioactivity. The Department of Energy, the Nuclear Regulatory Commission, the Department of Defense, and the Environmental Protection Agency often debate which standards should apply and who is entitled to enforce them.

Another example of conflict within the Federal Government concerns the coordination of agricultural practices with information on ground water protection. The Environmental Protection Agency sometimes does not consult with the Department of Agriculture to ensure consistent policies and practices.

A particularly striking example of the lack of coordination among Federal agencies may be seen in the differing regulatory requirements that the Environmental Protection Agency and the Department of the Interior's Office of Surface Mining often employ at the same mine site.

In the case of ground water management, pollution prevention is essential. Indeed, threats to ground water purity occur in simple forms, such as oil, paint, or other household or farm chemicals falling onto the ground, or in complex forms, such as the spillage of radioactive materials from our Nation's nuclear production facilities. Since there is yet no proven method for returning contaminated ground water to its original, unadulterated state, the Federal Government needs to have effective coordination both within its own agencies, and between itself and State and local governments. Otherwise, it is doubtful that an appropriate response to the countless threats to ground water purity will be formulated.

III. Legislative History

S. 1992 was introduced on December 21, 1987, by Senators Heinz, Sasser, and Roth and was referred to the Subcommittee on Government Efficiency, Federalism, and the District of Columbia.

Hearings were conducted on this legislation on April 22 and May 18, 1988, by the Subcommittee on Government Efficiency, Federalism, and the District of Columbia. At the April 22 hearing, witnesses appeared on behalf of state and interstate organizations. Witnesses included: Mr. Terry Cothron, Director, Division of Superfund, Tennessee Department of Health and Environment; Mr. Terry Fabian, Director, Office of Natural Resources, Pennsylvania Department of Environmental Resources; Mr Wayne Ashbee, Director, Division of Water Resources, Delaware Department of Natural Resources and Environmental Control; Mr. Dayle Williamson, Interstate Conference on Water Policy (Director, Nebraska Natural Resources Commission); and Mr. Norman Johnson, Legal Counsel, Western States Water Council.

At the May 18 hearing, witnesses appeared on behalf of industrial, environmental, and agricultural organizations, as well as the Administration. Witnesses included: Mr. Donald V. Feliciano, Associate, Booz-Allen and Hamilton, Inc.; Mr. Alan P. Egler, Consultant, DuPont, for the Chemical Manufacturers Association; Mr. Bruce R. Leavitt, Hydrogeologist, Consolidation Coal Co., for the American Mining Congress; Mr. Mark A. Maslyn, Assistant Director of National Affairs Division, American Farm Bureau Federation; Mr. Philip Cohen, Chief Hydrogeologist, U.S. Geological Survey; Ms. Marian Mlay, Director of Ground Water Protection, Environmental Protection Agency; Ms. Velma Smith, Director of the Ground Water Protection Project, Environmental Policy Institute; and Mr. Eric Draper, Ground Water Project Director, Clean Water Action Project.

At both of these hearings, testimony indicated an urgent need for the interagency and intergovernmental coordination envisioned by S. 1992. Indeed, all of the witnesses at both hearings, except for those representing the Administration, endorsed S. 1992. Mr. Fabian testified that:

> The multiple of agencies involved in the ground water game and the piecemeal manner in which programs have been developed has resulted in a fragmented and confusing array of programs, not just on the Federal level but on the interstate, State, and local level as well.

Likewise, Mr. Cothron testified that, "The question has been asked about whether the system is working now. To that, I respond 'What system?'."

Ms. Smith stated, regarding current Federal research policy:

> [I]t probably will not help a local community adopt a comprehensive plan and zoning ordinance that protects highly vulnerable karst geology regions; it may not tell a state how to develop a workable program for wellhead protection of public water supplies that meets the mandates of the Safe Drinking Water Act; it may not assist a regional authority with selection of the most suitable site for mu-

nicipal waste disposal; and it may not even speak to the town of less than 500 people who finds its community water well contaminated and has no idea how to respond.

Existing efforts to coordinate interagency ground water research and policy development have been confined to middle-level managers with minimal policymaking responsibility, who attend infrequent meetings of a subcommittee of the Federal Coordinating Council on Science, Engineering and Technology ("FCCSET"). This subcommittee replaced a working group headed by the Office of Management and Budget which had failed to hold a meeting for several months and to reach consensus on such issues as formulating a national ground water quality standard.

At present, there is no single individual or agency in the Federal Government charged with the coordination and dissemination of ground water research and management programs, according to the subcommittee's hearing record.

Based on testimony adduced at the hearings conducted by the Subcommittee on Government Efficiency, an amendment in the nature of a substitute was drafted. This amendment reflects virtually all of the changes suggested by experts during the hearing process. The suggested changes concerned the addition of the Department of Agriculture as a cochair of the Interagency Committee, as well as several other technical changes.

S. 1992 has the unusual distinction of being supported by a wide cross section of interest groups, for example: industry (the Chemical Manufacturers Association, the American Mining Congress, the National Coal Association, and the National Agricultural Chemicals Association); environmental organizations (Environmental Policy Institute, Natural Resources Defense Council, U.S. Public Interest Research Group, Environmental Defense Fund, and Clean Water Action Project); and agricultural groups (American Farm Bureau Federation), as well as several States (Tennessee, Pennsylvania, Delaware, and Wisconsin) and interstate ground water organizations (the Western States Water Council and the Interstate Conference on Water Policy).

IV. Committee Vote

Section 7(b) of the Standing Rules of the Senate requires that any rollcall votes taken during consideration of this bill be announced in this Report. On Friday, June 24, 1988, the Senate Governmental Affairs Subcommittee on Government Efficiency, Federalism, and the District of Columbia, by a vote of 5–0, unanimously polled out an amendment in the nature of a substitute to S. 1992. with Senators Sasser, Levin, Mitchell, Heinz, and Cohen voting in favor.

On July 12, 1988 the Governmental Affairs Committee passed by voice vote an amendment in the nature of a substitute to S. 1992, as well as a Mitchell/Heinz/Sasser amendment establishing the Administrator of the Environmental Protection Agency as the Chair of the Interagency Committee with the Director of the U.S. Geological Survey and the Secretary of the Department of Agriculture as Vice-Chairs. The amendment in the nature of a substitute had the three individuals serving as equal ranking co-chairs. This

vote took place subject to an objection that had been lodged pursuant to Standing Rule of the Senate 26.5(a).

The Committee, on July 14, voted by voice again to report the amendment in the nature of a substitute to S. 1992 to the floor with the Mitchell/Heinz/Sasser amendment, not subject to any objection or point of order.

V. Agency Views

In February and March of 1988, the Subcommittee on Government Efficiency, Federalism, and the District of Columbia requested views on S. 1992 from the following agencies: The Department of the Interior (Office of Surface Mining, Soil Conservation Service, Bureau of Reclamation, and the U.S. Geological Survey); the Environmental Protection Agency; the Department of Agriculture; the Department of Energy; the Department of Transportation; and the Army Corps of Engineers. To date only the U.S. Geological Survey and the Environmental Protection Agency have offered views on the bill and this occurred at the May 18 hearing. Both agencies expressed reservations about S. 1992; however, the Committee finds that the hearing record on S. 1992 substantiates the need for the ground water coordination legislation.

VI. Description of Bill

Ground water is a vital natural resource that provides a large segment of the population with drinking water. It is highly susceptible to contamination, and difficult to clean once it has been contaminated.

The Federal Government should focus and coordinate its efforts to manage and protect ground water. Since the Federal Government has a great deal of information available from its experience in administering ground water policies, it should play a leadership role, although state and local governments should play important supportive roles. The public, if properly informed, can also make a contribution in this effort.

The President of the United States is vested with the responsibility to coordinate the Nation's ground water management and protection activities.

An interagency Committee on Ground Water Management and Protection will be established within 90 days of the date of enactment of this bill. The Interagency Committee is comprised of a representative from each federal agency involved in ground water-related activities and shall be chaired by the Administrator of the Environmental Protection Agency, with the Director of the United States Geological Survey and the Secretary of the Department of Agriculture serving as vice-chairs. A vice-chair is required to consult with the vice-chairs as to the dates and agendas of meetings. A minimum of two public meetings per year is mandated.

The Interagency Committee is charged with examining federal ground water programs and policies. The Committee will also make recommendations on how best to streamline federal programs and make them more effective and more responsive to state and local needs.

An annual report must be submitted to Congress and be made available to the public by the Interagency Committee by January 15 of each year (beginning in 1989) and shall contain details of conflicts, inconsistencies, and unnecessary duplication in existing Federal laws, regulations, policies, and programs. The report shall recommend ways to eliminate these deficiencies and summarize the needs of State and local governments and the public, as well as the extent to which the Federal Government is addressing those needs. The report shall also contain any dissenting views of the vice-chairs.

An advisory Committee on Ground Water Management and Protection is to be established within 90 days of the date of enactment of this bill. The Advisory Committee shall be comprised of no more than 15 individuals from among State and local government officials, environmental and industrial organization, and the general public, who possess a knowledge of ground water issues, with a view toward achieving a regional balance as well as hydrogeological diversity.

The purpose of the Advisory Committee is to ensure that Federal ground water management and protection activities are responsive to state needs by acting as a liaison between State and local governments and the Federal Government and by serving as an information clearinghouse for the Interagency Committee.

The Interagency Committee is required to meet with the Advisory Committee at least once every 6 months and the Advisory Committee must submit at least one report per year to the Interagency Committee.

The Advisory Committee has the right to access information in the possession of the Interagency Committee.

Two million dollars is authorized in each of fiscal years 1988–1992, inclusive, in order to carry out the purposes of the bill.

VII. Regulatory Impact of Legislation

In accordance with section 11(b) of the Rule XXVI of the Standing Rules of the Senate, the Committee has determined that the enactment of this legislation would not have a significant regulatory impact on the public, nor would it constitute an undue regulatory burden. This legislation is submitted to streamline existing programs and adds no new regulatory requirements.

VIII. Cost of Legislation

The legislation authorizes the appropriation of $2,000,000 for each of fiscal years 1988–1992, inclusive.

IX. Cost Estimate of the Congressional Budget Office

Section 403 of the Congressional Budget and Impoundment Control Act and Rule XXVI of the Standing Rules of the Senate require each report to contain a statement of the cost of the reported bill prepared by the Congressional Budget Office. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 14, 1988.

Hon. JOHN GLENN,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1992, a bill to promote intergovernmental and interagency cooperation on ground water management and protection and to facilitate the dissemination of practical information on ground water protection to the public.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
Acting Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1992.

2. Bill title: A bill to promote intergovernmental and interagency cooperation on ground water management and protection and to facilitate the dissemination of practical information on ground water protection to the public.

3. Bill status: As ordered reported by the Senate Committee on Governmental Affairs, July 12, 1988.

4. Bill purpose: The bill would direct the President to establish an Interagency Committee on Ground Water Management and Protection and an Advisory Committee on Ground Water Management and Protection. The Interagency Committee would prepare an annual report on ground water policies and programs.

S. 1992 authorizes the appropriation of $2 million for each of fiscal years 1988 through 1992.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1988	1989	1990	1991	1992	1993
Authorization level	2.0	2.0	2.0	2.0	2.0	.....
Estimated outlays	.....	1.8	2.0	2.0	2.0	0.2

The costs of this bill fall within budget function 800.

Basis of Estimate

This estimate assumes the amounts authorized will be appropriated. The estimate of outlays is based on historical spending patterns of similar programs.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: James Hearn.

10. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

X. Appendixes

Appendix I

Federal Agencies and Offices with Jurisdiction over Ground Water Protection and Management

Environmental Protection Agency
- Office of Radiation Programs
- Office of Water Programs
- Office of Water Regulation Standards
- Office of Water Enforcement Permits
- Office of Solid Waste
- Office of Drinking Water
- Office of Emergency and Remedial Response
- Office of Pesticide Programs
- Office of Toxic Substances
- Office of Ground Water
- Office of Research and Development

Department of Agriculture
- Soil Conservation Service
- Agriculture and Research Service
- Agriculture Stabilization and Conservation Service
- Farmers Home Administration
- Forest Service

Department of the Interior
- Bureau of Indian Affairs
- Bureau of Reclamation
- National Park Service
- U.S. Geological Survey
- Office of Surface Mining
- Bureau of Land Management
- Fish and Wildlife Service

Tennessee Valley Authority

Department of Commerce
- National Oceanic and Atmospheric Administration
- National Bureau of Standards

Army Corps of Engineers

U.S. Coast Guard

National Science Foundation

Nuclear Regulatory Commission

Department of Energy

National Aeronautics and Space Administration

Department of Transportation
- Office of Hazardous Materials Regulation
- Office of Pipeline Safety Regulation

Department of Health and Human Services

APPENDIX II

Examples of Federal legislation encompassing ground water protection and management

Atomic Energy Act of 1954, 42 U.S.C. 2011
Clean Water Act of 1977, 33 U.S.C. 1251–1378
Coastal Zone Management Act of 1976, 16 U.S.C. 1451
Superfund—Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. 9601
Federal Insecticide, Fungicide, and Rodenticide Act as amended, 7 U.S.C. 136
Federal Land Policy and Management Act, 43 U.S.C. 1701
Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001
Hazardous Material Transportation Act of 1974, 49 U.S.C. 1801
National Environmental Policy Act of 1969, 42 U.S.C. 4371
Reclamation Act of 1902, 43 U.S.C. 390(b)
Resources Conservation and Recovery Act of 1976, 42 U.S.C. 690
Safe Drinking Water Act of 1974, 42 U.S.C. 300
Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201
Tennessee Valley Authority Act 16 U.S.C. 831 et seq.
Toxic Substances Control Act of 1976, 15 U.S.C. 2601
Uranium Mill Tailings Radiation Control Act of 1978, 49 U.S.C. 7901
Water Research and Development Act of 1978, 42 U.S.C. 7801